

JUL 18 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD WILLIS LEWIS,

Petitioner - Appellant,

V.

ART CALDERON,

Respondent - Appellee.

No. 05-55111

D.C. No. CV-03-06278-R

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Manuel L. Real, District Judge, Presiding

Argued and Submitted April 3, 2006
Pasadena, California

Before: SCHROEDER, Chief Judge, BRIGHT^{**} and PREGERSON, Circuit
Judges.

Defendant/appellant, Ronald Willis Lewis, appeals the district court's
dismissal of his petition for writ of habeas corpus under 28 U.S.C. § 2254. Lewis

^{*}This disposition is not appropriate for publication and may not be cited to
or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**}The Honorable Myron H. Bright, Senior United States Circuit Judge for
the Eighth Circuit, sitting by designation.

contends that the state court prosecutor's proffered reasons for excluding black jurors were pretexts for racial discrimination in violation of his constitutional rights. See Batson v. Kentucky, 476 U.S. 79 (1986); and People v. Wheeler, 22 Cal. 3d 258 (1978). The state trial court ruled that none of the proffered reasons for dismissing six of the seven black jurors was pretextual, and that ruling was upheld by the California appellate courts.

In federal court, on habeas review, we apply a highly deferential standard to state court findings of fact, and can disturb such findings only if there were an "unreasonable determination of the facts in light of the evidence presented in the state court proceeding." See 28 U.S.C. § 2254(e)(1). Furthermore, we can disturb a state court's determination of law only if it was "contrary to" or "involved an unreasonable application of" clearly established federal law as determined by the United States Supreme Court. See 28 U.S.C. § 2254(d)(1); Furman v. Wood, 190 F.3d 1002, 1004 (9th Cir. 1999).

The record in this case reflects that the prosecutor was asked to provide a justification for the peremptory strikes of each of the six black jurors in question. The prosecutor proffered a race neutral justification for each. Each justification was found by the trial court to have been supported in the context of the proceedings which the trial court was in the best position to understand and

observe. As the Supreme Court recently emphasized in Rice v. Collins, 126 S. Ct. 969, 975-76 (2006), when, as here, the issue of the validity of the proffered justification depends on credibility, the federal courts should not substitute their determination of such issues for the state trial court's.

The appellant relies upon the Supreme Court's earlier decision in Miller-El v. Dretke, 125 S. Ct. 2317 (2005) where the record compelled a different result. That result did not depend solely upon the evaluation of the credibility of proffered justifications, however. The record in Miller-El reflected, in addition, the shuffling of the jury to put white jurors ahead of black jurors, and disparate questioning of potential jurors depending on race. The record there compelled the conclusion that the proffered race neutral justifications for exclusion of the jurors was pretextual. No such conclusion is compelled in this case.

The issue in the context of this case is close and we may not have reached the same conclusion as the state court had we reviewed the record on direct appeal. The statutory limitations on the scope of federal court review compel affirmance of the district court's denial of relief.

AFFIRMED.